

SEP 20 1991

BEFORE THE FOREST PRACTICES APPEALS BOARD
STATE OF WASHINGTON

SIDNEY A. POTTS,

Appellant,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF NATURAL
RESOURCES and STATE OF
WASHINGTON, DEPARTMENT OF
TRANSPORTATION,

Respondent.

NO. 91-6

DEPARTMENT OF NATURAL
RESOURCES', DEPARTMENT OF
WILDLIFE'S, AND DEPARTMENT
OF TRANSPORTATION'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

This matter is an appeal from a stop work order served on
Sidney A. Potts by the Department of Natural Resources.

Appearances were as follows:

1. Sidney A. Potts, pro se.

2. Cheryl A. Nielson, Assistant Attorney General, for the
Department of Natural Resources.

3. Colleen G. Warren, Assistant Attorney General, for the
Department of Wildlife.

4. Patricia K. Nightingale, Assistant Attorney General,
for the Department of Transportation.

Betty J. Koharski provided court reporting services.

1 Witnesses were sworn and testified. Exhibits were
2 examined. From testimony heard and exhibits examined, the
3 Forest Practices Appeals Board makes these:

4 FINDINGS OF FACT

5 I.

6 On April 3, 1991, and on April 4, 1991, Sidney A. Potts
7 submitted for Department of Natural Resources' approval of
8 forest practices application 11-14,210 for timber harvesting in
9 Cowlitz County.

10 II.

11 Forest practices application 11-14,210 specified Sidney A.
12 Potts as timber owner and the Washington Department of
13 Transportation as landowner.

14 III.

15 Sidney A. Potts signed forest practices application
16 11-14,210 as timber owner.

17 IV.

18 The block provided for the landowner's signature on forest
19 practices application 11-14,210 was unsigned.

20 V.

21 The Department of Natural Resources, by letter of April 4,
22 1991 to Sidney A. Potts, denied approval of forest practices
23 application 11-14,210 because it lacked the landowner's
24 signature.

1 VI.

2 The April 4, 1991 letter from the Department of Natural
3 Resources to Sidney A. Potts outlined three alternatives for
4 processing a forest practices application without the
5 landowner's signature.

6 VII.

7 Sidney A. Potts received the April 4, 1991 letter from the
8 Department of Natural Resources.

9 VIII.

10 The lands covered by forest practices application 11-14,210
11 are owned by the State of Washington, Department of Wildlife and
12 Department of Transportation. The State of Washington,
13 Department of Transportation acquired the lands in its
14 possession in connection with the well-recognized catastrophe of
15 the eruption of Mt. St. Helens. The Washington State Department
16 of Wildlife had previously acquired the land covered by the
17 forest practices application 11-14,210 by a statutory warranty
18 deed in November of 1969.

19 IX.

20 The eruption of Mt. St. Helens created a sediment flow, the
21 expansion of which continues to this day and covers or is
22 expected to cover some of the lands at issue in this appeal.

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X.

None of the lands covered by forest practices application 11-14,210 are managed by the Department of Natural Resources for the benefit of Washington state schools.

XI.

On April 3, 1991, Sidney A. Potts entered upon and felled timber on property located within the NE 1/4, of the SW 1/4, of Sec. 26, Township 10, Range 2E, Cowlitz County, Washington, which is owned by the Washington State Department of Transportation and the Washington State Department of Wildlife.

XII.

The Department of Natural Resources issued an order to stop Sidney A. Potts from harvesting trees on the NE 1/4, of the SW 1/4, of Sec. 26, Township 10, Range 2E, Cowlitz County, Washington.

XIII.

The stop work order was served by the Department of Natural Resources on Sidney A. Potts by personal service on April 3, 1991 and by certified mail on April 11, 1991.

CONCLUSIONS OF LAW

I.

The Department of Natural Resources properly notified Sidney A. Potts of the disapproval of forest practices application 11-14,210.

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II.

Any profit from the harvesting of timber on the lands covered by forest practices application 11-14,210 would not benefit Washington state schools.

III.

The current expansion of sediment flow due to the eruption of Mt. St. Helens is not an emergency and therefore WAC 222-20-070, allowing timber harvesting without advance notification to or application with the Department of Natural Resources in case of emergencies, is inapplicable to this case.

IV.

Forest practices application 11-14,210 filed by Sidney A. Potts was not in compliance with RCW 76.09.060(3)(c) and WAC 222-20-010(3) which require that forest practices applications be signed by the landowner or that certain steps be taken when the landowner's signature is absent.

V.

Sidney A. Potts does not have rights as an individual in the timber covered by forest practices application 11-14,210.

VI.

On April 3, 1991, Sidney A. Potts entered upon and felled timber on property located within the NE 1/4, of the SW 1/4, of Sec. 26, Township 10, Range 2E, Cowlitz County, Washington, in violation of RCW 76.09.050(4) and WAC 222-20-010(1).

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VII.

The Department of Natural Resources properly issued the stop work order to Sidney A. Potts.

VIII.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law, the Board enters this:

ORDER

The stop work order issued by the Department of Natural Resources to Sidney A. Potts for harvesting timber on April 3, 1991, in violation of RCW 76.09.050(4) and WAC 222-20-010(1) on property located within the NE 1/4, of the SW 1/4, Sec. 26, Township 10, Range 2E, is sustained.

DONE at Lacey, Washington, this 24th day of October, 1991.

FOREST PRACTICES APPEALS BOARD


NORMAN L. WINN, Chairman


CLAUDIA K. CRAIG, Member


DR. MARTIN R. KAATZ, Member


WILLIAM A. HARRISON
Administrative Appeals Judge